

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

ROEL AND GLORIA SMITH

Plaintiffs,

v.

STATE FARM LLOYDS

Defendant.

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Civil Action No. 7:15-cv-00315

DEFENDANT STATE FARM LLOYDS' NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Defendant State Farm Lloyds files this Notice of Removal.

PROCEDURAL BACKGROUND

1. Plaintiff's ROEL AND GLORIA SMITH filed this action on June 17, 2015 against State Farm Lloyds, in the 229th Judicial District Court of Starr County, Texas. That case was docketed under cause number DC-15-352 (the "State Court Action").
2. State Farm Lloyds was served with process on June 22, 2015.
3. State Farm Lloyds files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the 229th Judicial District Court of Starr County, Texas to the United States District Court for the Southern District of Texas, McAllen Division.
4. Plaintiff's Original Petition filed in the State Court Action included a jury demand.

NATURE OF THE SUIT

5. This lawsuit involves a dispute over the alleged non-payment of insurance benefits and the handling of Plaintiff's claim for damages allegedly caused by hailstorm "on or about May 28,

ROEL AND GLORIA SMITH
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DEFENDANT'S NOTICE OF REMOVAL

2014.” Petition at ¶ 7. Plaintiff asserts causes of action against State Farm Lloyds, including for violations of Chapter 541 of the Texas Insurance Code, breach of contract, and negligence.

BASIS FOR REMOVAL

6. The Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is and was complete diversity between all real parties in interest (Plaintiff and State Farm Lloyds) and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. At the time this action was commenced, Plaintiff’s Roel and Gloria Smith were, and still are, residents and citizens of Texas residing in Starr County.

8. Defendant State Farm Lloyds was at the time this action was commenced, and still is, a citizen of Illinois. State Farm Lloyds is a "Lloyd's Plan" organized under chapter 941 of the Texas Insurance Code. It consists of an unincorporated association of underwriters who were at the time this action was commenced, and still are, all citizens and residents of Illinois, thereby making State Farm Lloyds a citizen of Illinois for diversity purposes. *See Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members).

9. Plaintiffs’ Original Petition contains a conclusory statement that “(p)laintiffs’ damages are less than \$75,000.00.” Plaintiffs do not state the exact range of damages they seek, as required by Texas Rule of Civil Procedure 47. However, in their Original Petition, Plaintiffs seek treble damages under the Texas Insurance Code, interest, attorney’s fees, mental anguish damages, and exemplary damages. In addition, prior to filing suit, Plaintiffs sent State Farm a demand letter, a copy of which is attached hereto as Exhibit 1 and incorporated by reference. The demand letter included an estimate of

Plaintiffs' alleged damages under the policy, which Plaintiffs allege to be \$91,365.56. As shown by Plaintiffs' demand and Petition, the amount in controversy requirement is satisfied.

REMOVAL IS PROCEDURALLY CORRECT

10. This Notice of Removal is timely under 28 U.S.C. § 1446(b). State Farm was served with process on June 22, 2015.

11. Venue is proper in this division under 28 U.S.C. §1441(a) because this district and division embrace the place in which the removed action has been pending.

12. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon State Farm in the State Court Action are attached to this notice as Exhibit 2.

13. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of Defendant's Original Notice of Removal was promptly given to all parties and to the clerk of the 229th Judicial District Court of Starr County, Texas.

14. All documents required by Local Rule 81 to be filed with this Notice of Removal are attached and indexed in Exhibit 2.

PRAYER

State Farm Lloyds respectfully requests that the State Court Action be removed and placed on this Court's docket for further proceedings. State Farm also requests any additional relief to which it may be entitled.

Respectfully submitted,

/s/ Charles W. Downing

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CERTIFICATE OF SERVICE

This will certify that a true and correct copy of this document was served on all counsel of record on the 21st day of July, 2015, as indicated below:

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